creditor. If, for instance, the fiduciary becomes bankrupt, and it appears that the fund for distribution among his creditors has been increased by the misapplication of the trust fund, it is obviously inequitable that the other creditors should derive any advantage from such increase. In other words, they ought not to be permitted unjustly to enrich themselves at the expense of the innocent *cestui que trust*. The latter's right to a preference has, accordingly, been recognized in several cases.[1]

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CONSIDERATION VOID IN PART. — (*From the lectures of Prof. Keener.*)—Under the doctrine of consideration void in part, the offeree may, if he finds among the things requested by the offerer in exchange for his promise, that which is in itself or in law impossible of performance (*Cripps* v. *Golding*, 1 Rolle's Abr. 30), or that which if standing alone would not be sufficient as a consideration (*Crisp* v. *Gammel*, Cro. Jac. 128), disregard the terms of the offer, and on his doing what remains, the offerer will be bound.

This doctrine cannot be supported on principle.

The objection to it is not that it violates any principle of the law of consideration, but that it violates the fundamental principle of the doctrine of mutual consent. The law recognizes in general the right of the offerer to propose the terms on which he will be bound. When one offers to become bound on another's doing certain things, the doing of those things is as much a condition precedent to the creation of an obligation as the doing of them would be a condition precedent to the creation of a liability, if, instead of making an offer, the party had covenanted to do certain things on the covenantee's doing the things in question.

The true doctrine would seem to be that while the offer will not ripen into a promise until the offeree has done all that the offerer requested him to do, yet, when all has been done, it is no defence for the promisor to say that some of the things done were insufficient in point of consideration.

To satisfy the fundamental principle of mutual consent, all must be done that the offerer requests.

The law of consideration is satisfied if, in doing those things, the offeree has, because of the doing of any one of them, suffered a detriment at the promisor's request in exchange for his promise.

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EQUITY, SPECIFIC PERFORMANCE, MUTUALITY OF REMEDY. — (*From Prof. Langdell's Lectures.*) — The rule as to mutuality of remedy is obscure in principle and in extent, artificial, and difficult to understand and to remember. The rule is entirely one of remedy; that the remedy by specific performance must be mutual.

The rule assumes that the contract is bilateral. It does not mean that there may not be specific performance of a unilateral contract. There may be performance of such a contract; for instance, of a covenant to convey land, made upon good consideration. From the terms of the rule it is assumed that the contract itself is mutual, that is, bilateral;

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[1] Peak *v.* Ellicott, 30 Kas. 156; Ellicott *v.* Brown, 31 Kas. 170; Harrison *v.* Smith, 83 Mo. 210 (overruling Mills *v.* Post, 76 Mo. 426); People *v.* City Bank, 96 N. Y. 32; People *v.* Dansville Bank, 39 Hun, 187; McColl *v.* Fraser, 40 Hun, 111 (semble); McLeod *v.* Evans, 66 Wis. 401.

But see, *contra*, White *v.* Jones, 6 N. B. R. 175; Re Hosie, 7 N. B. R. 601 (semble); Re Coan Co. 12 N. B. R. 203; Illinois Bank *v.* First Bank, 15 Fed. Rep. 858.